



PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 1642

Examiner: Brenda G. Brumback

In re application of:
Martha A. Wild *et al.*

Serial No.: 09/994,064

Filing Date: November 6, 2001

Attorney Docket No.: SY 01106 KQB US

Title:
RECOMBINANT INFECTIOUS
LARYNGOTRACHEITIS VIRUS
AND USES THEREOF

REQUEST FOR CORRECTED FILING RECEIPT

Kenilworth, NJ 07033
September 24, 2002

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Applicants request a corrected Filing Receipt for the above-captioned application.

The current Filing Receipt, having a mailing date of January 31, 2002, indicates that no drawings were submitted with the application as originally filed.

Applicants filed the above-captioned application on November 6, 2001. The application, as filed, included: a Utility Patent Application Transmittal form (PTO/SB/05); a Fee Transmittal for FY 2002 form (PTO/SB/17); a Preliminary Amendment; a Request for Transfer of Computer Readable Form of Sequence Listing; a copy of an executed Declaration and Power of Attorney from the grandparent application (U.S. Application Serial No. 08/410,121); a copy of the grandparent patent application,

including 172 pages of Specification, 6 pages of Claims, and a 1 page Abstract; a U.S. Application Data Sheet; and a return receipt postcard. However, applicants inadvertently omitted 35 pages of drawings from the application, as filed.

Applicants then filed a Communication Regarding Submission of Drawings on March 25, 2002, which included the inadvertently omitted 35 pages of drawings.

Despite the omission of the 35 pages of drawings in the as filed application, applicants believe the later filed drawings are a part of the original disclosure. Specifically, section 18 of applicants' Utility Patent Application Transmittal form (copy enclosed) states that the above-captioned application is a divisional of United States Patent Application Serial No. 08/468,190. In addition, this same section recites:

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

Accordingly, applicants believe that the above-captioned application incorporates by reference the parent application, U.S. Patent Application Serial No. 08/468,190. The parent application included 35 pages of drawings, as evidenced from the Filing Receipt in the parent application (copy enclosed). As a result, applicants further believe that the 35 pages of inadvertently omitted drawings are entitled to the November 6, 2001 filing date.

Applicants also cite M.P.E.P. § 201.06(c), Incorporation by Reference, in support of their position, which states:

As a safeguard, however, an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference."

The statement may appear in the specification or in the application transmittal letter. The incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application.

Accordingly, applicants request that a corrected Filing Receipt be issued in the above-captioned application indicating 35 pages of drawings.

If the Patent and Trademark Office has any questions regarding the above matter, the Office may contact the undersigned at the number set forth below.

Respectfully submitted,

Michael Biro

Michael G. Biro
Reg. No. 46,556

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PTO/SB/05 (03-01)

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**UTILITY
PATENT APPLICATION
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

| | |
|------------------------|--|
| Attorney Docket No. | SY01106KQB |
| First Inventor | Wild et al. |
| Title | RECOMBINANT LARYNGOTRACHEITIS VIRUS AND USES THEREOF |
| Express Mail Label No. | EL 403236001US |

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

1. ☒ Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original and a duplicate for fee processing)
2. ☐ Applicant claims small entity status.
See 37 CFR 1.27.
3. ☒ Specification [Total Pages 179]
(preferred arrangement set forth below)
 - Descriptive title of the invention
 - Cross Reference to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Reference to sequence listing, a table, or a computer program listing appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
4. ☐ Drawing(s) (35 U.S.C. 113) [Total Sheets]
5. Oath or Declaration [Total Pages 3]
 - a. ☐ Newly executed (original or copy)
 - b. ☒ Copy from a prior application (37 CFR 1.63 (d))
(for continuation/divisional with Box 18 completed)
 - i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
6. ☐ Application Data Sheet. See 37 CFR 1.76

ADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, DC 20231

7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
 - a. ☐ Computer Readable Form (CRF)
 - b. Specification Sequence Listing on:
 - i. ☐ CD-ROM or CD-R (2 copies); or
 - ii. ☐ paper
 - c. ☐ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 CFR 3.73(b) Statement (when there is an assignee) ☐ Power of Attorney
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
13. ☒ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s) (if foreign priority is claimed)
16. ☐ Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. ☒ Other: Request for Transfer---1 pg.

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP)of prior application No.: 08, 468,190

Prior application information:

Examiner Brumback, B.Group Art Unit: 1642

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS☒ Customer Number or Bar Code Label 24265 or ☐ Correspondence address below

| | | | | | |
|---------|------------------------------------|-----------|--------------|----------|--------------|
| Name | Pamela G. Salkeld (Reg. No. 38607) | | | | |
| Address | | | | | |
| City | | State | | Zip Code | |
| Country | | Telephone | 908-298-2135 | Fax | 908-298-5388 |

| | | | |
|-------------------|--------------------------|-----------------------------------|------------------|
| Name (Print/Type) | Pamela G. Salkeld | Registration No. (Attorney/Agent) | 38607 |
| Signature | <u>Pamela G. Salkeld</u> | Date | November 6, 2001 |

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.

FILING RECEIPT



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| APPLICATION NUMBER | FILING DATE | GRP ART UNIT | FIL FEE REC'D | ATTORNEY DOCKET NO. | DRWGS | TOT CL | IND CL |
|--------------------|-------------|--------------|---------------|---------------------|-------|--------|--------|
| 08/468,190 | 06/06/95 | 1802 | \$519.00 | 39116-B/JPW/ | 35 | 1 | 1 |

JOHN P WHITE
COOPER AND DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Application Processing Division's Customer Correction Branch within 10 days of receipt. Please provide a copy of the Filing Receipt with the changes noted thereon.

Applicant(s)

MARTHA A. WILD, SAN DIEGO, CA; MARK D. COCHRAN,
CARLSBAD, CA.

CONTINUING DATA AS CLAIMED BY APPLICANT-

THIS APPLN IS A CON OF 08/410,121 03/23/95
WHICH IS A CIP OF 08/126,597 09/24/93

FOREIGN FILING LICENSE GRANTED 07/26/95

* SMALL ENTITY *

TITLE

RECOMBINANT INFECTIOUS LARYNGOTRACHEITIS VIRUS AND USES THEREOF

PRELIMINARY CLASS: 435

JAN 24 1996

SEP 3 8 2002
U.S. PATENT & TRADEMARK OFFICE

Receipt

Please type a plus sign (+) inside this box ☐

PTO/SB/21 (6-98)
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Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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| | | | |
|---|----|------------------------|---------------------|
| <h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p> | | Application Number | 09/994,064 |
| | | Filing Date | November 6, 2001 |
| | | First Named Inventor | Wild et al. |
| | | Group Art Unit | 1642 |
| | | Examiner Name | Brumback, Brenda G. |
| Total Number of Pages in This Submission | 10 | Attorney Docket Number | SY01106KQB |

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OCT 18 2002

| ENCLOSURES (check all that apply) | | |
|---|---|---|
| <input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund | <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Additional Enclosure(s) (please identify below) Request Filing Receipt 3 pgs Patent Applic. Transmittal -copy-1 page Filing Receipt copy 1 pg. Sequence Listing Stmt 1 pg. Cert of Mailing; 1pg; Return Card |
| Remarks | | |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | |
|--|----------------------------------|
| Firm or Individual name | Michael G. Biro, Reg. No. 46,556 |
| Signature | <i>Michael Biro</i> |
| Date | September 24, 2002 |

| CERTIFICATE OF MAILING | | | |
|--|--|------|--|
| I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: | | | |
| Typed or printed name | | | |
| Signature | | Date | |

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Application No.: 09/994,064

Applicants' Reference: SY 01106 KQB US

Filing Date: November 6, 2001

Title of Invention: RECOMBINANT INFECTIOUS
LARYNGOTRACHEITIS VIRUS
AND USES THEREOF

Applicants: Martha A. Wild
Mark D. Cochran

Sequence Listing Statement

On November 6, 2001, applicants filed the above titled non-provisional application, submitting a Preliminary Amendment and a Request for Transfer of Computer Readable Form of Sequence Listing from the parent case, Serial No. 08/468,190 filed on June 6, 1995. I hereby declare that the information recorded on the diskette in the parent case is identical in content to the information in the written Sequence Listing of the parent and instant cases. The sequence listings do not go beyond the disclosure in the application as filed, and thus do not constitute new matter.

Michael G. Biro

Michael G. Biro, Reg. No. 46,556
Patent Attorney

Date: September 24, 2002